

### **REMARKS**

This Application has been carefully reviewed in light of the Office Action dated May 2, 2007 ("*Office Action*"). At the time of the Office Action, Claims 1, 3-9, 11, 13-20, 31, and 32 were pending and stand rejected. Applicant amends Claim 9. As described below, Applicant believes all claims to be allowable over the cited references. Therefore, Applicant respectfully requests reconsideration and full allowance of all pending claims.

#### **Section 101 Rejections**

The Examiner rejects Claim 9 under 35 U.S.C. § 101 as being directed at non-statutory subject matter. Specifically, the Examiner states that "A system" comprising means (i.e., software) does not include any functional structure of a system (i.e., apparatus)." (*Office Action*, pages 2-3). Applicant has amended Claim 9 to recite "a management application module." The management application module is illustrated and described with respect to Figure 1B of Applicant's Specification. Applicants respectfully submit that "a management application module" provides structure of a system. Accordingly, Claim 9 recites statutory subject matter under 35 U.S.C. § 101.

For at least these reasons, Applicant respectfully requests that the rejection of Claim 9 be withdrawn.

#### **Section 103 Rejections**

The Examiner rejects Claims 1, 3-9, 11, 13-20, and 31-32 under 35 U.S.C. § 103(a) as being unpatentable over various combinations of U.S. Patent No. 6,125,390 issued to Touboul ("*Touboul*"), U.S. Patent No. 5,761,502 issued to Jacobs ("*Jacobs*"), and U.S. Patent No. 6,049,828 issued to Dev et al. ("*Dev*") with U.S. Patent No. 6,011,838 issued to Cox ("*Cox*"), U.S. Patent No. 5,748,098 issued to Grace ("*Grace*"), U.S. Patent No. 5,440,688 issued to Nishida ("*Nishida*") and U.S. Patent No. 5,933,601 issued to Fanshier et al. ("*Fanshier*"). Because the proposed combination(s) of references do not disclose, teach, or suggest each and every element of Applicant's claims, Applicant requests reconsideration and allowance of Claims 1-9, 11-20, and 31-32.

**A. The Claims are Allowable over the Proposed Combinations**

In the Response to Office Action submitted on January 18, 2007 (“*Previous Response*”), Applicant argued that the proposed *Touboul-Jacobs-Dev* combination does not disclose, teach, or suggest “receiving . . . a user-generated dialogue request requesting context data for the subject system object and one or more relevant system objects known to be associated with the subject system object,” as recited in Applicant’s Claim 1. Specifically, Applicant demonstrated that *Dev*, as relied upon by the Examiner for disclosure of the “user-generated dialogue request,” did not disclose, teach, or suggest Applicant’s recited claim language.

In answer to Applicant’s arguments in the *Previous Response*, the Examiner acknowledges that *Dev* does not disclose “context data for one or more relevant system objects known to be associated with the subject system object.” (*Office Action*, page 11). The Examiner instead relies upon *Jacobs* for “context data for subject system object and one or more relevant system objects known to be associated with the subject system object.” (*Office Action*, page 11). Thus, the Examiner relies upon *Dev* for disclosure of Applicant’s operational step of “receiving, in response to the reporting of the alert condition, a user-generated dialogue request requesting context data for the subject system object” but relies upon *Jacobs* for disclosure of the “one or more relevant system objects” recited in Applicant’s Claim 1.

Applicant respectfully submits that such a piecemeal rejection of Applicant’s claim fails to give credence to the overall combination of features recited in Claim 1. Specifically, Applicants submit that the rejection of Claim 1, in the manner provided by the Examiner, considers the recited “one or more relevant system objects” in the abstract without taking into account the context of Applicant’s claim language as a whole. Applicant’s claim does not merely recite “receiving . . . a user-generated dialogue request requesting context data for the subject system object.” Additionally, Applicant’s claim does not merely recite the identification of “one or more relevant system objects.” To the

contrary, Applicant's Claim 1 specifically recites "receiving . . . a user-generated dialogue request requesting context data for the subject system object and one or more relevant system objects known to be associated with the subject system object." Thus, the user-generated dialogue request of Claim 1 requests context data for both the subject system object and the one or more relevant system objects known to be associated with the subject system object.

Neither *Dev* nor *Jacob* nor their proposed combination discloses this combination of features. As shown by Applicant in the *Previous Response*, *Dev* merely discloses that "[t]he user may click on a particular alarm in the listing of current alarms to obtain more information." (Column 15, lines 16-18). "By clicking on specified areas of the icon 424, the user can obtain further information regarding **the device** for which an alarm is registered." (Column 15, lines 21-24, emphasis added). Thus, the *Dev* system merely allows a user to select an alarm from a listing of alarms to receive more information about the alarm and the particular device generating the alarm. There is no disclosure of "receiving . . . a user-generated dialogue request requesting context data for the subject system object and one or more relevant system objects known to be associated with the subject system object," as recited in Claim 1.

*Jacob* does not cure the deficiencies identified above. According to *Jacob*, "all correlated events, and all impacted network elements are presented as correlated." (Column 9, lines 53-54). For example, all correlated events are presented as a single row in a table. (Column 9, lines 54-5). Thus, *Jacob* merely relates to the presentation of correlated events. Accordingly, at most, *Jacob* and *Dev*, when considered in combination, discloses allowing a user to select an alarm from a listing of alarms to receive more information about the alarm and, in response to receiving a user-selection of an alarm, presenting correlated events. There is no disclosure of "receiving . . . a user-generated dialogue request requesting context data for . . . one or more relevant system objects known to be associated with the subject system object," as recited in Claim 1. Applicant respectfully submits that a rejection of Claim 1 under the proposed *Touboul-Dev-Jacob*

combination can only result from the piecing together of disjointed portions of the references to reconstruct Applicants' claims. Because such a piecemeal rejection of Applicant's claim fails to give credence to the overall combination of features recited in Claim 1, Applicant submits that the rejection of Claim 1 over the proposed *Touboul-Dev-Jacob* combination is improper.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of independent Claim 1.

The Examiner also relies on the *Touboul-Jacobs-Dev* combination to reject independent Claims 9 and 11. Applicant respectfully submits, however, that the *Touboul-Jacobs-Dev* combination does not disclose, teach, or suggest each and every element of Applicant's independent Claims 9 and 11. For example, Claim 9 recites "means for receiving, in response to the reporting of the alert condition, a user-generated dialogue request requesting context data for the subject system object and one or more relevant system objects known to be associated with the subject system object." As another example, Claim 11 recites "logic encoded in media and operable when executed to . . . receive, in response to the reporting of the alert condition, a user-generated dialogue request requesting context data for the subject system object and one or more relevant system objects known to be associated with the subject system object." Thus, for reasons analogous to those discussed above with regard to Claim 1, Applicant respectfully submits that the *Touboul-Jacobs-Dev* combination does not disclose, teach, or suggest each and every element set forth in Applicant's independent Claims 9 and 11.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of independent Claims 9 and 11.

Dependent Claims 2-8 and 31-32 depend on Claim 1, which Applicant has shown above to be allowable. Dependent Claims 12-20 depend on Claim 11, which Applicant has shown above to be allowable. Additionally, Claims 2-8, 12-20, and 31-32 are

patentable because they recite additional features and operations not disclosed, taught, or suggested in the prior art. Since Claims 2-8, 12-20, and 31-32 incorporate the limitations of their respective independent claims, Applicant has not provided detailed arguments with respect to Claims 2-8, 12-20, and 31-32. However, Applicant remains ready to do so if it becomes appropriate. For at least these reasons, Applicant respectfully requests reconsideration and allowance of Claims 2-8, 12-20, and 31-32.

**B. The Proposed Combinations are Improper**

Second, Applicant respectfully submits that the Examiner has not provided the requisite teaching, suggestion, or motivation, either in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of Applicant's invention to make the proposed combinations of references. Applicant's claims are allowable for at least this additional reason.

**1. The Proposed Touboul-Dev-Jacobs Combination**

According to the Examiner and with regard to independent Claims 1, 9, and 11, "[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the teachings of *Touboul* and *Jacobs* because *Jacobs*'s teaching of accessing a database to identify a group of system objects known to be associated with one another would increase the alertness of network management personnel by providing a view of the current state of the network that correlates related network events (col. 2, lines 29-65)." (*Office Action*, page 11). The Examiner further speculates that "[i]t would have been obvious to one having ordinary skill in the art at the time of the invention was made to combine the teachings of *Touboul*, *Jacobs*, and *Dev* because *Dev*'s teaching of a user-generated dialogue request would make it easier for user in *Touboul*'s and *Jacobs*' systems to request more information regarding an alarm condition." (*Office Action*, pages 11-12).

These statements represent the subjective belief of the Examiner, do not point to any known authority, and therefore are not based on objective evidence of record. It appears that the Examiner has merely proposed alleged advantages of combining *Touboul* with *Dev* and *Jacob* (advantages which Applicants do not admit could even be achieved by combining these references in the manner the Examiner proposes). It is not sufficient to propose a modification to *Touboul* based on the mere possibility that the modification might improve *Touboul*. In other words, the advantages provided by the Examiner do not provide an explanation as to: (1) why it would have been obvious to one of ordinary skill in the art at the time of Applicants' invention (*without using Applicants' claims as a guide*) to modify the particular techniques disclosed in *Touboul* with the cited disclosures in *Dev* and *Jacob*; (2) how one of ordinary skill in the art at the time of Applicants' invention would have actually done so; and (3) how doing so would purportedly meet the limitations of the claims. Indeed, if it were sufficient for Examiners to merely point to a purported advantage of one reference and conclude that it would have been obvious to combine or modify that reference with other references simply based on that advantage (which, as should be evident from the case law discussed above, it certainly is not), then virtually any two or more references would be combinable just based on the fact the one reference states an advantage of its system. The Federal Circuit has made clear that this is not the law.

Furthermore, Applicant continues to submit that whereas *Touboul* relates to the field of managing applications on network workstations in a computer network (Abstract; Figure 1) *Jacobs* relates to the very different field of correlating network events in a telecommunications network. (Abstract). In addition to being outside the field of technology of *Touboul*, the telecommunications network of *Jacobs* does not even remotely deal with the same types of problems encountered by networked computer systems. As such, Applicant respectfully submits that there is no explicit or implicit reference in either reference which would suggest to one of ordinary skill to combine the correlating of network events in a telecommunications network as disclosed in *Jacobs* with the networked computer system of *Touboul*. In this respect, Applicant respectfully submits

that the references are non-analogous art and, because not related, an improper combination. Applicant respectfully submits that the Examiner has merely pieced together disjointed portions of references, with the benefit of hindsight using Applicant's claims as a blueprint, in an attempt to reconstruct Applicant's claims. It is clear based at least on the many distinctions between the references that the proposed *Touboul-Jacobs-Dev* combination does not, taken as a whole, suggest the claimed invention, taken as a whole.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of Claims 1, 3-9, 11, 13-20, and 31-32.

## **2. The *Touboul-Jacobs-Cox* Combination**

According to the Examiner and with regard to independent Claims 6 and 16, "[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of *Touboul*, *Jacobs*, and *Cox* because *Cox*'s teaching of determining a traffic load would increase the efficiency of *Touboul*'s and *Jacob*'s systems by minimizing the amount of failure caused by overloading a system object (col. 1, lines 11-15)." (Office Action, page 5). Again, it appears that the Examiner has merely proposed an alleged advantage of combining *Touboul* and *Jacobs* with *Cox* (advantages which Applicant does not admit could even be achieved by combining these references in the manner the Examiner proposes). While the Examiner has cited a portion of *Cox* that touts an advantage of its techniques for determining a traffic load, the Examiner has not pointed to any portions of the cited references that would teach, suggest, or motivate one of ordinary skill in the art at the time of invention to incorporate the network monitoring and controlling system disclosed in *Touboul* with the Network Topology Object Database applicable to a telecommunication network as disclosed in *Jacobs* and the traffic load determination techniques disclosed in *Cox*. In other words, the alleged advantage of the system disclosed in *Cox* does not provide an explanation as to: (1) why it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention (*without using Applicant's claims as a guide*) to modify the particular techniques disclosed in

*Touboul* and *Jacobs* with the disclosure of *Cox*; (2) how one of ordinary skill in the art at the time of Applicant's invention would have actually done so; and (3) how doing so would purportedly meet the limitations of Applicant's claims. Applicant respectfully submits that if it were sufficient for Examiners to merely point to a purported advantage of one reference and conclude that it would have been obvious to combine or modify that reference with other references simply based on that advantage (which, as should be evident from the case law discussed above, it certainly is not), then virtually any two or more references would be combinable just based on the fact the one reference states an advantage of its system. Of course, as the Federal Circuit has made clear that that is not the law.

Furthermore, Applicant continues to submit that it certainly would not have been obvious to one of ordinary skill in the art at the time of invention *to even attempt* to, let alone *to actually*, modify or combine the particular techniques disclosed in *Touboul* and *Jacobs* with the traffic determination techniques of *Cox* in the manner proposed by the Examiner.<sup>1</sup> As described in the previous Response to Office Action submitted on October 6, 2005, *Touboul* relates to "a method and apparatus which automatically detects and corrects error conditions occurring in programs running on network workstations." (Column 1, lines 12-15). Specifically, the system of *Touboul* identifies the error-causing application and applies a corrective measure to address the identified problem. In contrast, *Cox* relates to a system that "dynamically and automatically determines the correct peak hour and average usage at that hour (or other time period) for selected components of network elements like a switch." (Column 3, lines 30-33). As a result, "the load on the selected component may be adjusted or the network otherwise reconfigured." (Column 3, lines 46-47). In addition to being outside the field of technology of *Touboul*, the traffic load determination system of *Cox* does not deal with the same types of problems encountered by fault-detection systems such as *Touboul*. For example, *Cox* explicitly

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<sup>1</sup> If "common knowledge" or "well known" art is relied upon by the Examiner to combine or modify the references, Applicant respectfully requests that the Examiner provide a reference pursuant to M.P.E.P. § 2144.03 to support such an argument. If the Examiner relies on personal knowledge to supply the required motivation or suggestion to combine or modify the references, Applicant respectfully requests that the Examiner provide an affidavit supporting such facts pursuant to M.P.E.P. § 2144.03.



states that the objective of the disclosed packet telephony system is to provide “more accurate usage data . . . [to allow] traffic engineers to take proactive measures to prevent new conditions from impacting service.” (Column 3, lines 56-59). Thus, the solution proposed by *Cox* is designed to prevent system failures. As a result, one of ordinary skill in the art would not have been motivated to combine the traffic determination techniques of *Cox* with the system of *Touboul*, which is designed to detect, report and correct program errors (Column 4, lines 6-7). In this respect, Applicant respectfully submits that the references are non-analogous art and, because not related, an improper combination.

The identified differences in *Touboul* and *Cox* provide evidence that one of ordinary skill in the art at the time of Applicant’s invention would have considered the references as relating to different fields of invention and would not made the proposed combination. Applicant respectfully submits that the Examiner’s attempt to modify or combine *Touboul* with *Jacobs* and *Cox* appears to constitute the type of impermissible hindsight reconstruction of Applicant’s claims, using Applicant’s claims as a blueprint, that is specifically prohibited by the M.P.E.P. and governing Federal Circuit cases. Accordingly, since the prior art fails to provide the required teaching, suggestion, or motivation to combine *Touboul* with *Jacobs* and *Cox* in the manner the Examiner proposes, Applicant respectfully submits that the Examiner’s conclusions set forth in the Office Action do not meet the requirements set forth in the M.P.E.P. and the governing Federal Circuit case law for demonstrating a *prima facie* case of obviousness. Applicant respectfully submits that the rejection must therefore be withdrawn.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of dependent Claims 6 and 16.

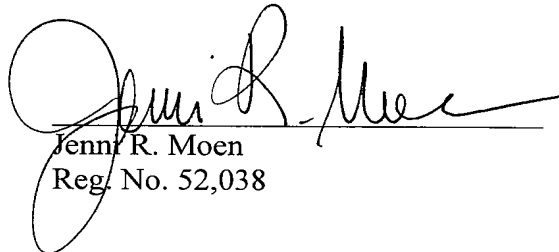
**CONCLUSION**

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Jenni R. Moen, Attorney for Applicant, at the Examiner's convenience at (214) 953-6809.

Applicant believes that no fees are due. However, the Commissioner is hereby authorized to charge any fees or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,  
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